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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,691	12/26/2000	Mitchell R. Swartz		4269

7590 11/18/2003  
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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 3641

The reply filed on 9/23/03 is not fully responsive to the 8/29/03 Office Action because the deficiencies cited regarding the Appeal Brief dated 7/3/03 have not been properly or totally corrected. Specifically:

1. The Summary still includes subject matter not found in the specification (see item b of previous Office Action).
2. The recitation of Issues is still improper (see item c of the previous OA). The claimed "operability" of the invention is not a 35 U.S.C. 112, first and second paragraph issues, but a 35 U.S.C. 101 issue. The section still contains issue not relevant to the examiner rejections.

Note that the Examiner provided in the previous Office Action an example and cited the specific section in the MPEP (i.e., 1206) that discusses of how to properly phrase an Issue. Notwithstanding this, the statements regarding the 35 U.S.C. 102 and 103 rejections are still improper because the specific prior art used as basis for the unpatentability determination have not been identified. The Examiner did not deem it necessary to include the entire provisions of MPEP 1206 in the previous Office Action.

3. The Grouping of Claims states that claims do not stand or fall together. However, there is not discussion in the Arguments section of why EACH claim is considered separately patentable.

4. The Arguments section is still incomplete and improper. Not all grounds for rejection have been addressed, e.g., new matter rejection under section 9 of the Final Office Action.

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Since the above deficiencies have been listed in the 8/29/03 Office Action, Applicant's failure to correct them is no longer considered inadvertent.

In addition, it is noted that claim 14 is not included in Appendix A of the revised brief. Also, it is noted that Appendix B is mischaracterized as Amendments Entered After Final. To avoid confusion with the claims under Appeal, Appendix B should be deleted.

Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

AMENDED & CORRECTED  
SUPERVISORY PATENT EXAMINER